

Reverse Mortgage Servicing

These examination procedures apply to reverse mortgage servicing and are a stand-alone resource to complete a reverse mortgage servicing review. Prior to using these procedures, however, examiners should complete a risk assessment and examination scope memorandum. Depending on the scope, in conjunction with the compliance management system and consumer complaint response review procedures, each reverse mortgage servicing examination will include one or more of the following modules:

Exam Date:	[Click&type]
Exam ID No.	[Click&type]
Prepared By:	[Click&type]
Reviewer:	[Click&type]
Docket #:	[Click&type]
Entity Name:	[Click&type]

- Module 1 Servicing Transfers, Loan Ownership Transfers, and Escrow Disclosures
- Module 2 Account Maintenance, Payments, and Disclosures
- Module 3 Consumer Inquiries, Complaints, and Error Resolution Procedures
- Module 4 Maintenance of Escrow Accounts or Set-Asides and Insurance Products
- Module 5 Information Sharing and Privacy
- Module 6 Events of Default and Death of Borrower
- Module 7 Foreclosures
- Module 8 Examiner Conclusions and Wrap-Up

Examination Objectives

In consultation with Headquarters:

1. To identify acts or practices that materially increase the risk of violations of Federal consumer financial laws in connection with reverse mortgage servicing and other risks to consumers.
2. To gather facts that help to determine whether a regulated entity engages in acts or practices that violate the requirements of Federal consumer financial laws.
3. To determine if a violation of a Federal consumer financial law has occurred and whether supervisory or enforcement actions are appropriate.

Background

Reverse Mortgage Origination

A reverse mortgage is a special type of loan that allows older homeowners to borrow against the equity (wealth) in their homes. Instead of making payments to the servicer, the borrower receives funds from the lender. The borrower may elect to receive the funds as monthly payments, a lump sum, or by accessing a line of credit. These funds, plus the interest charged on the loan, and any fees such as insurance premiums or servicing fees, increase the balance of the loan each month. Over time, the loan amount grows, and must be re-paid when the borrower dies or a default event occurs. Since equity is the value of the home minus any loans, the borrower has less and less equity in the home as the loan balance increases. A borrower may, but is not obligated to, make payments to reduce the loan balance.

Generally, in order to qualify for a reverse mortgage, a borrower:

- Must be at least 62 years old;
- Must reside in an eligible home as their primary residence;¹ and
- Must own the home free and clear, or have substantial equity in the home.

Lenders will also conduct a financial assessment to ensure borrowers have the financial capacity to continue paying obligations, such as real estate taxes, and homeowner's or flood insurance. The reverse mortgage also must be in first lien position, so the borrower must first pay any existing liens in full.

The Federal Housing Administration (FHA), under the Home Equity Conversion Mortgage (HECM) program, insures most reverse mortgages. As with other FHA insured mortgage products, there is a maximum loan amount. Some lenders also offer proprietary (non-HECM) reverse mortgages, which generally are designed for borrowers with higher home values and more equity to borrow against. These proprietary reverse mortgages are not federally insured, but many companies that offer proprietary reverse mortgages emulate the consumer protections found in the HECM program, including mandatory counseling.

There are different options for receiving funds from a reverse mortgage loan. With a HECM loan for example, a borrower can receive money as a line of credit; in monthly installments; or in a lump sum. The borrower can also get a combination of monthly installments and a line of credit. There is a cap

¹ Eligible property types include single-family homes, 2-4 unit properties, manufactured homes built after June 1976, condominiums, and townhouses. Co-ops do not qualify.

on the amount a borrower can take out in the first year on all HECM payout options. The lender will calculate the amount that the customer is authorized to borrow overall, based on age, the interest rate, and value of the home. This number is the initial principal limit. Generally, a borrower can take out up to 60 percent of the initial principal limit in the first year. However, if the amount owed on an existing mortgage (or other required payments) is more than 50 percent of the initial principal limit, the borrower can take out enough to pay off the mortgage (and any other required payments, including upfront loan fees) plus additional cash of up to 10 percent of the initial principal limit.

The cost of this loan product is generally higher than traditional forward mortgage loans. Costs that accrue over time include interest and ongoing mortgage insurance premiums. The interest rate depends on which lender the borrower chooses, as well as other factors. The interest rate may be fixed or adjustable. On HECM loans, annual mortgage insurance currently adds an additional 1.25 percent on top of the interest rate.

There are also upfront costs associated with a reverse mortgage. Below is a list of typical fees that lenders may charge at the start of a loan under the HECM program:²

- The Upfront Mortgage Insurance Premium (MIP) is a one-time, nonrefundable charge. The lender calculates the amount based on how much the customer borrows within the first year of the loan.
- An Origination Fee is the amount the lender or mortgage broker charges the borrower for making the reverse mortgage loan. On HECM loans, lenders may charge an origination fee of up to \$6,000.
- Real Estate Settlement Costs (closing costs) are similar to the costs a borrower pays to take out a traditional mortgage. They include appraisal, title insurance, and inspection fees.
- Reverse Mortgage Counseling Costs are the costs charged by a counseling agency for providing pre-loan counseling required of a HECM loan. The U.S. Department of Housing and Urban Development (HUD) rules prohibit a lender from paying the counseling fee. Although not required, most companies that offer proprietary reverse mortgages emulate the mandatory counseling requirement found in the HECM program.

Many borrowers use a portion of their loan funds to pay for the upfront costs. Paying for upfront costs with loan funds is more expensive than paying for them out of pocket because the borrower will be charged interest and ongoing mortgage insurance on these costs.

² There are other upfront requirements for taking out a reverse mortgage, which may include income and asset verification, repair set-asides, paying off prior liens, or paying off delinquent federal debt.

Reverse Mortgage Servicing

Although borrowers do not make monthly payments, servicers calculate monthly interest and mortgage insurance charges based on the current loan balance and then add these charges, along with monthly servicing fees, if applicable, to the loan balance. The amount paid in interest and mortgage insurance compounds the same way a balance on a credit card does. The loan balance used to calculate interest and mortgage insurance changes each month and includes the prior month's interest, mortgage insurance, and servicing fee charges. As the loan balance grows, the amount of the interest and mortgage insurance charged that month also grows.

Taxes, Insurance, and Maintenance

Reverse mortgage borrowers are obligated to pay taxes and insurance and to provide normal maintenance and upkeep of the property for the life of the loan. If taxes and insurance are not paid, or if the borrower allows the condition of the property to deteriorate without making the necessary repairs (the borrower commits “waste”), the lender may consider the borrower to be in default on the loan and the servicer could foreclose on the home.

For many borrowers payment of taxes and insurance from the reverse mortgage proceeds is easier and may help prevent default. For some borrowers a written understanding with the servicer for the payment of taxes and insurance, typically referred to as a set-aside, may even be required. For example, under the FHA's HECM program, at origination, the lender will determine if a Life-Expectancy Set-Aside (LESA) is required, and if so, whether it must be fully funded or partially funded, based on a financial assessment of the borrower. If required, the lender will then create a tax and insurance set-aside.³ This will reduce the principal draw amount available to the borrower.

Occupancy

The following occupancy requirements apply to HECM reverse mortgage loans:

- The property must be occupied by the borrower, co-borrower, or eligible non-borrowing spouse⁴ as a principal residence.⁵

³ For a Home Equity Conversion Mortgage (HECM) loan, a set-aside itself is not an escrow account as defined in 12 CFR 1024.17(b).

⁴ This applies generally to HECM reverse mortgages originated on or after August 4, 2014. The Federal Housing Administration (FHA) defines an *eligible non-borrowing spouse* to mean the spouse, as determined by the law of the state in which the spouse and mortgagor reside or the state of celebration, of the HECM mortgagor at the time of closing and who also is not a mortgagor; and who 1) has been the spouse of the mortgagor at the time of loan closing and has remained the spouse of such HECM mortgagor for the duration of the HECM mortgagor's lifetime; 2) has been properly disclosed to the mortgagee at origination and specifically named as a Non-Borrowing Spouse in the HECM documents; and 3) has occupied, and continues to occupy, the property securing the HECM as the Principal Residence of the Non-Borrowing Spouse.

⁵ A HECM borrower must occupy the subject property as their principal place of residence. The 12 consecutive month exception

- The loan becomes due if the borrower and any co-borrower(s) transfer title.
- The borrower or, where applicable, the eligible non-borrowing spouse, must complete an annual occupancy certification.

Causes of Default

A borrower with a reverse mortgage loan may continue to reside in the property for life even if the total principal and interest due exceeds the initial principal amount and/or the value of the property. Principal and interest will continue to accrue through the duration of the loan, but no repayment is due unless one of the following default events occurs:

- The last borrower on the note dies, or if there is an eligible non-borrowing spouse on a HECM loan originated on or after August 4, 2014, the deferral period after the last borrower's death ends;⁶
- The borrower and, where applicable, any co-borrower and eligible non-borrowing spouse, no longer occupy the property or fail to certify occupancy;
- The borrower and any co-borrower transfer ownership;
- The borrower fails to comply with a requirement of the mortgage, such as if the borrower fails to pay taxes or insurance or commits waste.

On a HECM reverse mortgage originated on or after August 4, 2014, upon the death of the last surviving borrower, the servicer must obtain an eligible non-borrowing spouse certification from any eligible non-borrowing spouse within 30 days of receiving notice of the last surviving borrower's death, and then no less than annually thereafter for the duration of the deferral period. If the non-borrowing spouse provides and maintains certification and meets any other conditions, the servicer will defer the due and payable status of the reverse mortgage and not foreclose or displace the non-borrowing spouse.

Some loss mitigation options may also be available if a loan default is due to non-payment of taxes or insurance, or property condition. These may include short sale, deed-in-lieu; a repayment plan of

applies only to borrowers who fail to occupy the subject property because of a physical or mental illness.

⁶ HUD Mortgagee Letter 2014-07 stipulates on HECM loans originated on or after August 4, 2014, that the due and payable status that occurs because of the death of the last surviving borrower is deferred until the death of the last surviving non-borrowing spouse; or until another listed event occurs, if a borrower was married at the time of closing and the non-borrowing spouse was identified at the time of closing and has occupied and continues to occupy the property as the non-borrowing spouse's principal residence.

advances for taxes or insurance made by the servicer;⁷ or a refinance into another reverse mortgage.

The borrower may have the right to sell or refinance. The borrower may sell the property for the lesser of the appraised value or the mortgage balance.⁸ A HECM borrower is not liable for the difference if the loan balance is greater than the property value. The borrower may refinance the property by paying off the total loan balance. If the property value exceeds the loan balance (including any costs of sale), the borrower is entitled to the difference, after the sale.

With respect to a HECM loan, if the cause of default is death of the last borrower, any successors have up to six months from the date of death to sell or refinance the property and may pay off the loan for 95 percent of the appraised value. If the successors sell the home, they are not liable for the difference if the loan balance is greater than the net proceeds from sale, and they retain all sale proceeds in excess of the loan balance.

Applicable Law

The following Federal consumer financial laws and regulations apply to reverse mortgage servicing:

- The Real Estate Settlement Procedures Act (RESPA) and its implementing regulation, Regulation X, impose requirements for servicing transfers, responding to written information requests, resolution of notices of error, force-placed insurance, and escrow account maintenance.⁹
- The Truth in Lending Act (TILA) and its implementing regulation, Regulation Z, impose requirements on servicers regarding payment crediting, including imposition of late fee and delinquency charges, provision of payoff statements with respect to closed-end consumer credit transactions secured by a principal dwelling, and disclosures regarding rate changes for adjustable rate mortgages. For open-end mortgages, Regulation Z provisions related to error resolution apply to the extent that the servicer is a creditor. Additionally, TILA and Regulation Z generally impose requirements on loan owners for loan ownership transfers.¹⁰

⁷ For HECM loans, HUD issued mortgagee letters 2015-11 and 2016-07 with guidance for establishing repayment plans in the event a servicer chooses to offer such plans. The servicer will set up a repayment plan with the borrower to repay advanced funds for defaulted real estate taxes and/or insurance. Use of repayment plans are at the servicer's discretion.

⁸ For HECM loans that are due and payable, a borrower or an eligible non-borrowing spouse may sell for the lesser of the mortgage balance or five percent below the appraised value.

⁹ However, the general servicing requirements regarding policies and procedures; early intervention; continuity of contact; and loss mitigation procedures of Regulation X are generally inapplicable to servicers of reverse mortgage transactions. 12 CFR 1024.30(b)(2). Also, as noted, for a HECM loan, a set-aside itself is not an escrow account as defined in 12 CFR 1024.17(b).

¹⁰ The periodic statement requirements of Regulation Z are inapplicable to servicers of reverse mortgage transactions. 12 CFR 1026.41(e)(1).

- The Fair Debt Collection Practices Act (FDCPA) governs collection activities conducted by third-party collection agencies, as well as servicer collection activities if the servicer is a *debt collector* as defined by the FDCPA. Typically, a servicer who acquired the loan when it was already in default falls under that definition, but a servicer may not be covered if one of the exceptions to the FDCPA applies.
- The Gramm-Leach-Bliley Act (GLBA) requires servicers within the scope of coverage to provide privacy notices and limit information sharing in particular ways.
- The Equal Credit Opportunity Act (ECOA) and its implementing regulation, Regulation B, apply to those servicers that are creditors, such as those who participate in a credit decision. The statute makes it unlawful to discriminate against any borrower with respect to any aspect of a credit transaction:
 - On the basis of race, color, religion, national origin, sex or marital status, or age (provided the applicant has the capacity to contract);
 - Because all or part of the applicant's income derives from any public assistance program; or
 - Because the applicant has in good faith exercised any right under the Consumer Credit Protection Act.¹¹

To carry out the objectives set forth in the **Examination Objectives** section, the examination process also will include assessing other risks to consumers generally governed by the Dodd-Frank Act. These risks may include potentially unfair, deceptive, or abusive acts or practices (UDAAPs) with respect to servicers' interactions with consumers.¹² Collecting information about risks to consumers, whether or not there are specific legal guidelines addressing such risks, can help inform the Bureau's policymaking. The standards the CFPB will use in assessing UDAAPs are:

- An act or practice is unfair when:
 - (1) It causes or is likely to cause substantial injury to consumers;
 - (2) The injury is not reasonably avoidable by consumers; and
 - (3) The injury is not outweighed by countervailing benefits to consumers or to competition.

¹¹ The Consumer Credit Protection Act (the Act), 15 USC 1601 et seq., is the collection of federal statutes that protects consumers when applying for or receiving credit. The Act includes statutes that have dispute rights for consumers, such as the Fair Credit Reporting Act (FCRA). The Equal Credit Opportunity Act (ECOA) prohibits discriminating against an applicant who has exercised a dispute right pursuant to one of the statutes outlined in the Act.

¹² Dodd-Frank Act, Sec. 1036, PL 111-203 (July 21, 2010).

- A representation, omission, act, or practice is deceptive when:
 - (1) The representation, omission, act, or practice misleads or is likely to mislead the consumer;
 - (2) The consumer's interpretation of the representation, omission, act, or practice is reasonable under the circumstances; and
 - (3) The misleading representation, omission, act, or practice is material.
- An abusive act or practice:
 - (1) Materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service or
 - (2) Takes unreasonable advantage of –
 - A lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service;
 - The inability of the consumer to protect its interests in selecting or using a consumer financial product or service; or
 - The reasonable reliance by the consumer on a covered person to act in the interests of the consumer.

Please refer to the examination procedures regarding UDAAPs for more information about the legal standards and the CFPB's approach to examining for UDAAPs.

The particular facts in a case are crucial to a determination of unfair, deceptive, or abusive acts or practices. As set out in the **Examination Objectives** section, examiners should consult with Headquarters to determine whether the applicable legal standards have been met before concluding a violation of any federal consumer financial law could be cited, including a UDAAP violation.

Reverse Mortgage Servicing Examination Procedures

Compliance Management System

1. Review the entity's compliance management system using the Compliance Management Review section of the CFPB examination procedures.

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Service Provider Oversight

2. Reverse mortgage servicers may be responsible for the activities of service providers. Examiners should ensure that such entities appropriately manage their relationships with service providers. Examiners should evaluate policies, procedures, complaints, and copies of any agreements between entities and service providers acting on behalf of the entity for purposes of assessing risks to consumers.

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Module 1 – Servicing Transfers, Loan Ownership Transfers, and Escrow Disclosures

Servicing Transfers

Examiners should engage in several steps to assess compliance with law in connection with servicing transfers and loan ownership transfers. If a servicer maintains escrow accounts on behalf of the borrower, examiners should review compliance with requirements for escrow accounts.¹³ First, examiners should review a sample of servicing records, from the servicer’s primary computer system, for loans transferred within the previous year. Examiners also may need to review copies of the electronic and paper documents transferred from the prior servicer. Additionally, they should review relevant records outside the servicer’s primary computer system, such as copies of the RESPA disclosures, and evidence of delivery. If consumer complaints or document review indicate potential violations in these areas, examiners also may conduct interviews of consumers from the sample and ask questions relevant to each topic area below.

RESPA

1. Assess compliance with RESPA provisions regarding Mortgage Servicing Transfer Disclosures.¹⁴ Please refer to the examination procedures for servicing transfers regarding RESPA, 12 CFR 1024.33, for more information.¹⁵

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FDCPA

2. Assess the applicability of FDCPA and, if applicable, compliance with FDCPA, Right to Validation Notice for Certain Consumers. Please refer to the examination procedures regarding FDCPA, 15 USC 1692g(a), for more information.

¹³ Under Regulation X, 12 CFR 1024.17, an escrow account means “any account that a servicer establishes or controls on behalf of a borrower to pay taxes, insurance premiums (including flood insurance), or other charges with respect to a federally related mortgage loan, including charges that the borrower and servicer have voluntarily agreed that the servicer should collect and pay. The definition encompasses any account established for this purpose, including a ‘trust account’, ‘reserve account’, ‘impound account’, or other term in different localities. An ‘escrow account’ includes any arrangement where the servicer adds a portion of the borrower’s payments to principal and subsequently deducts from principal the disbursements for escrow account items. For purposes of [12 CFR 1024.17], the term ‘escrow account’ excludes any account that is under the borrower’s total control.” For a HECM loan, a set-aside itself is not an escrow account.

¹⁴ For reverse mortgage loans, the effective date of transfer is the transfer date agreed upon by the transferee servicer and the transferor servicer.

¹⁵ Note that under 12 CFR 1024.33(a), if a person who applies for a reverse mortgage transaction is denied credit within three days (excluding legal holidays, Saturdays, and Sundays) after applying, a servicing disclosure statement is not required to be delivered.

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Other Risks to Consumers

3. Determine whether the servicer accurately represents balances or amounts owed after transfer of account servicing.

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4. Determine whether a servicer who receives servicing transfers complies with the terms of loss mitigation agreements entered into by the borrower and the prior servicer.

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5. Determine whether the servicer who receives servicing accurately represents remaining loan proceeds and terms of the reverse mortgage agreement.

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Ownership Transfers

Regulation Z

Examiners should determine whether the servicer is required to transmit the loan ownership transfer notice. The institution would have this obligation if (a) it becomes the owner of an existing mortgage loan by acquiring legal title to the debt obligation, whether through a purchase, assignment or other transfer and (b) acquires more than one mortgage loan in any twelve-month period, according to 12 CFR 1026.39(a)(1). For purposes of this requirement, a *mortgage loan* is either an open-end consumer credit transaction secured by the principal dwelling of the consumer, or a closed-end consumer credit transaction secured by a dwelling or real property, according to 1026.39(a)(2).¹⁶

To assess whether the servicer is complying with obligations under Regulation Z to notify consumers of changes in the loan ownership, examiners should sample from the list of loans in which the *loan's owner* changed within the previous year. For the loans in the sample, examiners should review copies of consumer disclosures regarding loan ownership and evidence of delivery.

¹⁶ A servicer of a reverse mortgage loan is not treated as an owner of the obligation for purposes of 12 CFR 1026.39 if the servicer holds title to the loans, or title is assigned to the servicer, solely for the administrative convenience of the servicer in servicing the obligation. Contractually, the loan owner may have delegated the responsibility to send the notice to the servicer. Although the loan owner cannot delegate its obligation under law, examiners should assess whether the servicer is fulfilling its commitment, if applicable.

6. Assess compliance with Regulation Z, Notice of Ownership Transfer Provision. Please refer to the examination procedures regarding Regulation Z, 12 CFR 1026.39, for more information.

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Escrow Transfers

RESPA

To assess whether the servicer is complying with obligations under Regulation X to notify consumers of changes in the escrow account requirements resulting from a transfer of servicing, examiners should sample from the list of loans transferred within the previous year that included escrow accounts. For the loans in the sample, examiners should review copies of consumer disclosures regarding escrow accounts and evidence of delivery.

7. If the servicer maintains escrow accounts, assess compliance with RESPA, Escrow Accounts, Transfer of Servicing Provisions. Please refer to the examination procedures regarding RESPA, 12 CFR 1024.17, for more information.¹⁷

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¹⁷ For a HECM loan, a set-aside itself is not an escrow account.

Module 2 – Account Maintenance, Payments, and Disclosures

Unlike a traditional mortgage, borrowers do not make periodic payments on reverse mortgages. Typically, servicers make payments to borrowers and calculate interest on the growing loan balance. Some borrowers, however, may: 1) make payments to offset the interest that accrues on the loan monthly or to reduce the principal balance; 2) make payments to pay advances made by the lender to pay taxes and insurance; or 3) make a full payment to pay off the loan. To assess payment posting and fee practices, examiners should review a sample of servicing records. Examiners should begin by reviewing a sample of records from the servicer’s primary record system; if potential problems are found, examiners should review copies of relevant records outside the primary system, such as copies of consumer payment records, and copies of bills from vendors documenting any services related to the consumer’s loan account. If consumer complaints or document review indicates potential violations in these areas, examiners also may conduct interviews of consumers from the sample and ask questions relevant to each topic area below.

Fees and Charges

1. Assess policies, procedures, and practices for assessing fees and charges, such as attorney’s fees, property inspection fees, occupancy inspection fees, and other charges, including whether the servicer ensures that fees are only assessed when the activity or service actually takes place. Document the timing and frequency of fees, and determine whether the servicer has established reasonable intervals for repeat services.

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2. Determine whether the servicer communicates the fees and charges to the borrower, and if so, determine whether the communication provides clear and conspicuous disclosure of fees and charges.

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Payment Processing

Regulation Z

3. Assess compliance with Regulation Z, Payment Posting Provisions for closed-end mortgages secured by a consumer’s principal dwelling and open-end credit. Please refer to the examination procedures regarding Regulation Z, 12 CFR 1026.36(c)(1) and 1026.10, for more information.

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Other Risks to Consumers

4. To the extent that the servicer markets optional products, review marketing materials, including telemarketing scripts, direct mail, web-based, or other media, and determine whether the servicer discloses each optional product's costs and terms clearly and prominently. In reviewing such disclosures, assess clarity and readability with enhanced scrutiny. Fine print and oral disclosures add additional barriers to consumer comprehension. If consumer complaints or document review indicates potential risks to consumer in these areas or the servicer engages in telemarketing, monitor call center activity and statements of representatives marketing the products. If the servicer engages in web-based marketing, monitor Internet communications related to the marketing.

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5. Determine whether the servicer added on optional products or services without obtaining explicit authorization from the consumer. If the servicer obtains written authorization, review records of consumers who received additional products or services to ensure that the lender has provided and retained written authorization.

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6. Assess policies, procedures and practices for determining whether the consumer is current on payment of taxes and insurance; and whether the servicer correctly represents amounts owed for taxes and insurance.

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Other Reverse Mortgage Disclosures

7. Review the servicer's policies, procedures, and systems to assess the adequacy of whether the servicer furnishes applicable disclosures when required by Regulation Z. Examiners should review a sample of payoff statements.

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Payoff Statements

8. Determine whether the servicer provided consumers, or verifiable persons acting on behalf of consumers, an accurate payoff statement upon request within a reasonable amount of time and in no case more than seven business days after receiving the request. Please refer to the examination procedures regarding TILA, 12 CFR 1026.36(c)(3), for more information.

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Module 3 – Consumer Inquiries, Complaints, and Error Resolution Procedures

Examiners should review consumer complaints specific to reverse mortgages and may want to call specific complaining consumers to interview them regarding their experiences. Examiners should listen to live calls and taped calls to assess the quality and training of call center personnel. Examiners should determine whether complaints were resolved adequately, and whether they were resolved in a timely manner.

1. Determine whether the servicer has an adequate process to identify and escalate requests for information, notices of error, or complaints that may involve regulatory compliance issues.

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RESPA Error Resolution Procedures

2. Assess compliance with Regulation X, Notice of Error Provision. Please refer to the examination procedures regarding Regulation X, 12 CFR 1024.35, for more information.

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RESPA Requests for Information

3. Assess compliance with Regulation X, Written Information Request Provision. Please refer to the examination procedures regarding Regulation X, 12 CFR 1024.36, for more information.

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Other Risks to Consumers

4. Where the borrower is facing imminent foreclosure, determine whether the servicer has an adequate process for expedited evaluation and resolution of requests for information, notices of error, or complaints that may involve regulatory compliance issues. Such an adequate process could include a dedicated phone line that connects directly to a live representative or another path for borrowers or borrower advocates to resolve identified regulatory compliance issues in advance of an imminent foreclosure.

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Module 4 – Maintenance of Escrow Accounts or Set-Asides and Insurance Products

Maintenance of Escrow Accounts or Set-Asides

Under the HECM program, some borrowers with limited income may be required to have a set-aside for payment of taxes and insurance.¹⁸ Depending on the set-aside, the servicer may pay the tax and insurance bills when they become due from the borrower's funds available, or the borrower may receive payments from the servicer to pay the tax and insurance bills when they become due. If the borrower has insufficient funds available to satisfy these unpaid property charges, the borrower is responsible for the payment of the charges and must provide evidence of payment to the servicer. The servicer may also advance its own funds on behalf of the borrower, and then set up a plan with the borrower for repayment. If the borrower is unable to make payment, the servicer may consider the reverse mortgage to be in default. Proprietary reverse mortgages may also offer or require an escrow account or set-aside.

If the file review indicates potential risks to consumers, examiners also should conduct interviews of a sample of consumers and staff, if appropriate, to assess consumer experiences with set-aside accounts and any force-placed insurance products.

Disclosures

1. If the servicer maintains escrow accounts, assess compliance with Regulation X, Escrow Disclosures. Please refer to the examination procedures regarding Regulation X, 12 CFR 1024.17, for more information.

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Disbursements

2. If the servicer maintains escrow accounts, assess whether the servicer makes payments in a timely manner. Refer to the examinations procedures regarding Regulation X, 12 CFR 1024.34, for more information.

¹⁸ For a HECM loan, a set-aside itself is not an escrow account. Under Regulation X, 12 CFR 1024.17, an escrow account means “any account that a servicer establishes or controls on behalf of a borrower to pay taxes, insurance premiums (including flood insurance), or other charges with respect to a federally related mortgage loan, including charges that the borrower and servicer have voluntarily agreed that the servicer should collect and pay. The definition encompasses any account established for this purpose, including a ‘trust account,’ ‘reserve account,’ ‘impound account,’ or other term in different localities. An ‘escrow account’ includes any arrangement where the servicer adds a portion of the borrower's payments to principal and subsequently deducts from principal the disbursements for escrow account items. For purposes of [12 CFR 1024.17], the term ‘escrow account’ excludes any account that is under the borrower's total control.”

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Force-Placed Insurance

3. Assess compliance with Regulation X, Force-Placed Insurance Provision. Please refer to the examination procedures regarding Regulation X, 12 CFR 1024.37, for more information.

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Other Risks to Consumers

4. Determine whether information provided to borrowers about set-aside accounts is clear, prominent, and readily understandable.

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5. Determine whether the borrower incurred penalties or unnecessary charges in the event the servicer failed to make disbursements of set-aside funds for insurance, taxes, and other charges with respect to the property in a timely manner.

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Module 5 – Information Sharing and Privacy

Privacy Notices

1. Assess compliance with Privacy of Consumer Financial Information Regulation that implements GLBA. Please refer to the GLBA examination procedures, 12 CFR 1016.4 and 1016.5, for more information.

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Information Sharing With Affiliates

2. Assess compliance with the FCRA Affiliate Marketing Rule. Please refer to the FCRA examination procedures, 12 CFR 1022.21, for more information.

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Module 6 – Events of Default and Death of Borrower

A reverse mortgage typically becomes due and payable because of the following reasons:

- The last borrower on the note dies, or if there is an eligible non-borrowing spouse on a HECM loan originated on or after August 4, 2014, the deferral period after the last borrower's death ends;
- The borrower and, where applicable, any co-borrower and eligible non-borrowing spouse, no longer occupy the property or fail to certify occupancy;
- The borrower and any co-borrower transfer ownership; or
- The borrower fails to comply with a requirement of the mortgage, such as if the borrower fails to pay property taxes or insurance or commits waste.

When a borrower dies, the reverse mortgage may become due and payable if the property is not the principal residence of at least one surviving borrower. However, for some reverse mortgages under the HECM program originated on or after August 4, 2014, the loan is not due and payable if a non-borrowing spouse meets HUD's deferral period requirements. To be eligible, the non-borrowing spouse must:

- Have been the spouse of a HECM borrower at the time of loan closing and have remained the spouse of the borrower for the duration of the borrower's lifetime;¹⁹
- Have been properly disclosed to the lender at origination and specifically named as a non-borrowing spouse in the reverse mortgage documents; and
- Have occupied, and continue to occupy, the property securing the reverse mortgage as the principal residence of the non-borrowing spouse.

When a loan becomes due and payable, a servicer may offer options to a borrower to help avoid foreclosure. These loss mitigation options may include short sale or deed-in-lieu; a repayment plan of advances made by the servicer for taxes or insurance; or a refinance into another reverse mortgage.²⁰ Examiners should obtain a sample of servicing records of consumers in default, including a sufficient number of loans in which the consumer has filed for bankruptcy, to assess collection and loss

¹⁹ An individual engaged in a committed relationship with the borrower, akin to marriage but prohibited at the time of the HECM mortgage from legally marrying, but who was legally married to the borrower at the time of death may also be considered an eligible non-borrowing spouse if they meet the other conditions.

²⁰ For HECM loans, servicers are required to notify the borrower or the borrower's successor that they can pay off the loan, sell the property in a short sale or execute a deed in lieu of foreclosure, regardless of the type of default. In the event of nonpayment for taxes and insurance, the servicer may offer a repayment plan or refinance.

mitigation practices. Examiners should obtain collection call records and listen to a sample of collection calls. If consumer complaints or document review indicates potential violations in these areas, examiners also may conduct interviews of consumers from the sample and ask questions relevant to each topic area below.

The FDCPA defines a *debt collector* as any person who regularly collects, or attempts to collect, consumer debts for another person or institution or uses some name other than its own when collecting its own consumer debts, with certain exceptions. The definition includes, for example, an institution that regularly collects debts for an unrelated institution.

The debt collector definition has an exception that frequently applies to reverse mortgage servicing: an institution is not a debt collector under the FDCPA when it collects debts that were *not* in default when they were obtained by the servicer.²¹ Thus, a servicer that purchases the servicing rights for a portfolio of loans will typically be a debt collector only for loans that were in “default” at the time of the purchase.²²

FDCPA

1. Determine if FDCPA covers collection activities of the servicer. If so, assess compliance with FDCPA. Please refer to the FDCPA examination procedures for more information.

[Click&type]

2. Determine whether the servicer contacts borrowers in an appropriate manner:
 - a. Employees and third-party contractors clearly indicate to consumers that they are calling about the collection of a debt.
 - b. Employees and third-party contractors do not disclose the existence of a consumer’s debt to the public without the consent of the consumer, except as permitted by law.
 - c. The entity has policies on avoiding repeated telephone calls to consumers that annoy, abuse, or harass any person at the number called.

[Click&type]

²¹ 15 USC 1692a (6)(F)(iii).

²² The Fair Debt Collection Practices Act (FDCPA) itself does not contain a definition of the term *default*. In determining whether a debt is in default, the following factors, among others, are generally considered: the creditor’s customary policies and practices; terms of the contract; determinations by the originator; and State law.

Other Risks to Consumers

3. Determine whether the servicer's representatives make misrepresentations or use deceptive means to collect debts.

[Click&type]

ECOA

Disparate Treatment in Loss Mitigation

As discussed above, examiners should obtain a sample of servicing records of borrowers in default to assess loss mitigation activity. While conducting the review of the servicer's loss mitigation activities discussed above, examiners must be mindful of activities that may indicate disparate treatment of borrowers in violation of ECOA. These include discrimination on the basis of race, color, religion, national origin, sex or marital status, or age (provided the applicant has the capacity to contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act.

4. Determine whether the file documents indicate that the servicer made loss mitigation decisions based upon any protected status.

[Click&type]

5. Determine whether there were clear policies and procedures for making loss mitigation decisions or whether there was broad employee discretion, including in assessing fees. If employees have discretion, determine whether the procedures, controls, and monitoring that govern the exercise of discretion are adequate to mitigate the risk of disparate treatment.

[Click&type]

6. Determine whether there were adequate processes and controls for policy exceptions and adequate documentation of decisions.

[Click&type]

7. Review complaints of discrimination and litigation alleging discrimination.

[Click&type]

8. Review any internal fair lending audits or reports.

[Click&type]

9. Assess policies and procedures for considering various types of income of a loss mitigation applicant or the spouse of an applicant in the event of default.

[Click&type]

10. Assess policies and procedures for servicing loans held by borrowers with limited English proficiency (LEP borrowers). Among other things, assess whether the institution:

- a. Identifies borrowers that may require non-English language assistance;
- b. Provides an option for customer service calls in a language other than English;
- c. Has customer service personnel available to provide assistance in languages other than English and, if so:
 - i. Whether they are dedicated service personnel; and
 - ii. Whether they receive the same training, and have the same authority, as other customer service personnel; and
- d. Provides translations of English language documents to LEP borrowers.

[Click&type]

Disparate Impact in Loss Mitigation

An examination of whether a servicer's loss mitigation program results in adverse impact on a protected class will rely on procedures outlined in the CFPB's ECOA Examination Program Manual, including the ECOA Baseline Review Modules, and the Interagency Fair Lending Examination Procedures.

Examiners, in consultation with Headquarters, should:

11. Obtain information sufficient to determine whether the servicer provides loss mitigation workouts to consumers in compliance with ECOA and Regulation B. For example, this may involve an analysis of the distribution of protected class members in the pool of delinquent borrowers versus the distribution of protected class members receiving a range of loss mitigation outcomes, including a short sale; deed-in-lieu; a repayment plan of advances for taxes or insurance made by the servicer; or a refinance into another reverse mortgage.

[Click&type]

12. Obtain information sufficient to determine whether the rate and timing of foreclosures are compliant with ECOA and Regulation B. For example, this may include analysis of the representation of protected classes in the group of seriously delinquent borrowers versus their representation among borrowers who lose their homes to foreclosure.

[Click&type]

13. To complete a disparate impact analysis of a servicer's loss mitigation program, and determine whether a facially neutral policy or practice that has an adverse effect on a protected class meets a legitimate business need that cannot reasonably be achieved by a less discriminatory alternative, refer to Section B of the CFPB's Fair Lending Examination Procedures and consult with Headquarters.

[Click&type]

Other Risks to Consumers

Loss Mitigation Process

14. In cases where the servicer takes an application, determine whether information provided to borrowers about loss mitigation alternatives is clear, prominent, and readily understandable.

[Click&type]

15. Determine whether the servicer provides adequate methods for borrowers to contact it for information about the loss mitigation process, and timely responds to those contacts.

[Click&type]

16. Determine whether the servicer adequately documents its contacts with borrowers regarding loss mitigation. Appropriate documentation of oral contacts includes the dates of communications, names of contact person(s), and a summary of the conversation.

[Click&type]

17. Determine whether the servicer has procedures in place to ensure it collects and tracks all paperwork in an efficient and reliable manner.

[Click&type]

18. Determine whether the servicer is providing borrowers with timely information on the status of foreclosure alternatives.

[Click&type]

19. Determine if the servicer includes any waiver of legal rights in its foreclosure alternative agreements.

[Click&type]

20. Determine whether the servicer provides denial notifications of loss mitigation applications to borrowers timely and provides specific reasons for denial.

[Click&type]

Accuracy of Payoff

21. Determine whether the servicer accurately calculates the payoff amount when the loan becomes due and payable, or when the borrower decides to pay the loan in full.

[Click&type]

Sale of Property

22. In the event the reverse mortgage becomes due and payable, triggering sale of the property, ensure that the servicer provides information to the borrower about sale options in a clear, timely manner.

[Click&type]

Deeds-In-Lieu of Foreclosures

23. If the servicer offers deeds-in-lieu of foreclosures, determine whether it provides clear, timely information about requirements and cost to the borrower.

[Click&type]

Bankruptcy

24. Determine whether the servicer properly identifies accounts as being in active bankruptcy to ensure that the servicer provides protection from foreclosure or collections to which the borrower is entitled under federal bankruptcy law.

[Click&type]

25. As an event making the reverse mortgage due and payable, for borrowers who have filed for bankruptcy, determine whether the servicer notifies the debtor of the total amount due, including principal, interest, fees, expenses, or other charges, as of the date the debtor filed for bankruptcy, and whether the servicer provides the debtor with an escrow account statement, if applicable, prepared as of the date the debtor filed for bankruptcy.

[Click&type]

Death of Borrower

26. Determine if the servicer responds timely to communications from a non-borrowing spouse and/or successor of a deceased borrower upon notification of the death of a borrower.²³

[Click&type]

27. Determine whether the servicer provides accurate information, including payoff information, to successors of deceased borrowers once the mortgage reaches due and payable status.

[Click&type]

28. Determine whether the servicer informs borrowers' successors in HECM loans of their right pay off the loan balance for 95 percent of the property value.

[Click&type]

29. Assess the servicer's compliance management system as it relates to appraisals. For example, in the event the borrower dies, determine whether the servicer provides copies of appraisals and other written valuations to the borrower's successor, developed to determine property value in relation to loan value to facilitate sale of the property.²⁴

[Click&type]

²³ A reverse mortgage must be paid in full once it has been called due and payable because of the borrower's death. If there is not a co-borrower or eligible non-borrowing spouse, the borrower's successor must work with the servicer to ensure the reverse mortgage is paid in full in a timely manner. If arrangements to pay the reverse mortgage are not made with the loan servicer, the first notice or filing for foreclosure may be made between 30 days and six months from when the loan was called due and payable.

²⁴ On a HECM loan, if the mortgage is due and payable because of the last surviving borrower's death, the borrower's estate and/or successors have the ability to "sell" the property for at least the lesser of the outstanding balance or 95 percent of the appraised value.

30. Determine whether the servicer referred a reverse mortgage to foreclosure improperly after the death of a borrower, such as when an eligible non-borrowing spouse occupies the home, or while a successor of a borrower was attempting to sell the home within six months of the death of the last surviving borrower.²⁵

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²⁵ For HECM loans, reference mortgagee letter 2015-10 for FHA's specific timeframes for initiating foreclosure.

Module 7 – Foreclosures

A default on a reverse mortgage, that may trigger foreclosure, typically occurs because of the following reasons:

- The last borrower on the note dies, or if there is an eligible non-borrowing spouse on a HECM loan originated on or after August 4, 2014, a deferral period ends;
- The borrower and, where applicable, any co-borrower and eligible non-borrowing spouse, no longer occupy the property or fail to certify occupancy;
- The borrower and any co-borrower transfer ownership;
- The borrower fails to comply with a requirement of the mortgage, such as if the borrower fails to pay property taxes or insurance or commits waste.

Examiners should obtain a sample of servicing records of borrowers where the servicer has made the first notice or filing for foreclosure. For the loans in the sample, examiners should focus on whether the borrower is in fact in default and whether all amounts due are correct. Examiners should review amounts set forth in foreclosure affidavits, compare them to amounts recorded in the servicer's primary computer system, and compare them to all statements made in communications from the borrower, including consumer complaints. In appropriate cases, examiners should compare the filing dates reflected in the servicer's records to the dates identified in public records.

Examiners also should review all complaints of borrowers in instances where the servicer made the first notice or filing for foreclosure in the review period. In reviewing foreclosure practices, examiners should focus on the following areas:

Other Risks to Consumers

1. Evaluate the servicer's process for determining whether to refer a loan to foreclosure. Determine whether the servicer has reviewed adequate information to confirm the borrower's default, including the borrower's loan history; notes in the servicing system regarding communications with borrowers, non-borrowing spouses, and successors of borrowers; whether the borrower or non-borrowing spouse is entitled to protection from foreclosure under applicable law; and any complaints lodged with the servicer.

[Click&type]

2. Determine whether the servicer has referred to foreclosure, or foreclosed upon, any borrower who is not in default under the terms of the obligation, including foreclosures initiated based on occupancy requirements.

[Click&type]

3. Determine whether the factual assertions made in foreclosure documents filed by or on behalf of the financial institution are accurate and adequately supported by file documentation. Examiners should focus on whether the borrower is in default and statements regarding amounts owed.

[Click&type]

Module 8 – Examiner Conclusions and Wrap-Up

To conclude this supervisory activity, examiners must complete all steps under this section, regardless of the entity’s risk profile.

1. Summarize the findings, supervisory concerns, and regulatory violations.

[Click&type]

2. For the violations noted, determine the root cause by identifying weaknesses in internal controls, audit and compliance reviews, training, management oversight, or other factors. Determine whether each violation is a pattern or practice, or an isolated situation that occurred despite appropriate controls.

[Click&type]

3. Identify action needed to correct violations and weaknesses in the institution’s compliance management system, as appropriate.

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4. Discuss findings with the institution’s management and, if necessary, obtain a commitment for corrective action

[Click&type]

5. Record violations according to Bureau policy in the Report of Examination/Supervisory Letter and CFPB’s electronic database system to facilitate analysis and reporting.

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6. If the examiner believes enforcement action may be appropriate, contact appropriate agency personnel for guidance.

[Click&type]

7. Prepare a memorandum for inclusion in the work papers and CFPB’s official system of record that outlines planning and strategy considerations for the next examination and, if appropriate, interim follow-up.

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